

cannot rely upon patent drawings as showing the actual proportions or relative dimensions of a structure when the reference does not disclose that the drawings are to scale and is silent as to the dimensions of the structure shown in the drawings.

The PTO admits that prior art Fig. 6 "may not be to scale" (see Office Action page 3). It is clear, therefore, that the PTO is improperly relying upon prior art Fig. 6 for alleged disclosure of a supporting member with an inner surface having a substantially constant diameter along the entire length of the supporting member, as claimed. Again, as acknowledged by the PTO, there is no disclosure in the present application that the structure shown in prior art Fig. 6 is drawn to scale or that any of the dimensional relationships between the elements in that drawing are disclosed in the present application. Applicants respectfully submit that it defies logic to admit on one hand that the structure shown in prior art Fig. 6 "may not be to scale," but then turn around and rely on that same drawing as showing a specific dimension (i.e., a supporting member inner surface having a substantially constant diameter).

In the September 2, 2004 Amendment, the entirety of which is incorporated herein by reference, Applicants cited to Federal Circuit case law proving that the claim term "substantially constant" denotes language of approximation and is used in patent documents when warranted by the nature of the invention, in order to accommodate the minor variations that may be appropriate to secure the invention. As such, changing "substantially constant diameter" appearing in the last line of pending claim 1 to -- constant diameter-- , as suggested by Examiner Kackar during the July 8, 2004 and January 18, 2005 telephone conversations, would result in a technically inaccurate recitation of the claimed supporting member structure. That is, on a microscopic level, the inner diameter of the supporting member can never be constant. The PTO has never addressed this issue and is herein respectfully requested to do so.

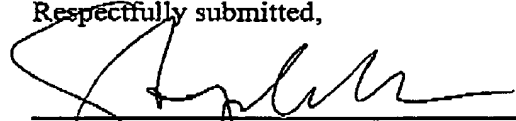
Moreover, the PTO's reliance upon *In re Daily and Eilers*, 149 USPQ 47 (CCPA 1966) is misplaced. In that case the court held that recitation of "less than a hemisphere" configuration is a mere matter of choice and not significantly novel over the applied prior art. Pending claim 1 does not, however, recite a structure including "a minor change of shape...", as alleged in the Office Action. Again, pending independent claim 1 recites that an inner surface of the supporting member has a substantially constant diameter along the entire length of the supporting member. This recitation clearly pertains to the dimensional relationships between various points along the entire length of the supporting member, and not a change of shape.

In view of all of the foregoing, reconsideration and withdrawal of the §102/§103 rejection over AAPA Fig. 6 are respectfully requested.

Again, Examiner Kackar is requested to contact Applicants' attorney (Steven W. Caldwell) to schedule an interview in the event this application is not in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,


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January 18, 2005

Date

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